Criminal Revision No.62 of 2003

Vikas Yadav ---------- Revisionist

Versus

State of Uttaranchal and others ---------- Respondents

Hon'ble M.M.Ghildiyal J.

This revision has been filed against the order dated 1.5.2003 passed by the Sessions Judge, Nainital in S.T.No. 158 of 2000 State Versus Satwati and others rejecting the application of the revisionist under section 311 Cr.P.C.

The revisionist has moved an application u/s 311 Cr.P.C. to summon P.W.1 for cross-examination. The prosecution filed objection. Section 311 Cr.P.C. is quoted as under: -

> " Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examine; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

Under this section the court at any stage may summon any person as a witness or examine any person in attendance though not summoned as a witness, or recall and re-examine any such person if his evidence appears to the court to be essential to the just decision of the case. Learned Sessions Judge while rejecting the application has given a finding that by recalling of P.W.1 it is a case of harassment. He has not stated whether the recalling of P.W.1 for re-examination is essential for the just decision of the case or not. The revisionist has prayed that the P.W.1 may be recalled at his own expenses. In the circumstances the learned Sessions Judge, Nainital is directed to re-consider the application of the revisionist and to decide the same in view of the spirit of section 311 Cr.P.C. whether re-examination of P.W.1 is essential to the just decision of the case.

The revision is disposed of finally with the above directions.

(M.M. Ghildiyal, J.)

May 21, 2003